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decree dismissing the petition, petitioners bring error. Reversed.

W. D. Cardwell, of Richmond, for plaintiff in error.

The Attorney General, and *J. D. Hank, Jr.*, of Richmond, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* BAILEY.

June 13, 1918.

[96 S. E. 275.]

1. Carriers (§ 318 (10*))—Injuries to Passengers—Evidence.—Where the issue was whether a passenger while stepping from the floor of the car to the running board was thrown to the ground by the stopping of the car, or by a sudden jerk in starting it before the passenger alighted, evidence, when considered in connection with the operation of natural laws, held to require a finding that the injury occurred through the stopping of the car.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 725.]

2. Appeal and Error (§ 995*)—Review—Questions of Fact.—Code 1904, § 3484, providing that, where the evidence is certified, the rule of decision shall be as on a demurrer to the evidence, does not make it compulsory on the appellate court to accept as true what in the nature of things could not have occurred.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 576.]

Error to Hustings Court of Richmond.

Action by Garnett A. Bailey, who sues, etc., against the Virginia Railway & Power Company. In trespass on the case for personal injuries. Judgment for plaintiff, and defendant brings error. Reversed, and new trial granted.

H. W. Anderson, *A. B. Guigon*, and *T. Justin Moore*, all of Richmond, for plaintiff in error.

O'Flaherty & O'Flaherty, of Richmond, for defendant in error.

L. J. UPTON & CO., Inc., *v.* REEVE.

June 13, 1918.

[96 S. E. 277.]

1. Sales (§ 440 (3*))—Merchantability—Evidence.—Whether seller who loaded onion sets on proper cars breached contract providing that sets were to be in good merchantable condition at time of shipment would depend on condition of sets at time of shipment, and evi-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.